

Democracy: the path from reasoning and patriarchal tradition to legal doctrine and state practice.

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Abstract

The article analyzes theoretical problems in the field of formalization of democratic ideals, including the identification of objectivity, determination of the democratization process and conditions that influence this process, the history of democracy: formation and development of this concept in the Ancient Greek policies, mainly in Athens and in modernity, and there are factors that determine the formation of concepts of democracy in general, and of the public administration process in particular, with attention to the methodological basis of the ideological processes of transformation in the modern world. A scrupulous study from the point of view of scientific pragmatism and formal logical laws constitutes the scientific novelty of this study.

INTRODUCTION.

Democracy, as the desire for meaningful participation in solving common affairs, and thereby, increasing individual social rating, is primordial in human nature.

Socialization in its various forms presupposes a process of objectifying the very fact of the existence and legitimacy of relations of submission and command. The legitimization of these relations can take any form, which is primarily determined by the degree of development of a person, his level of knowledge, knowledge, and due to this, the factor of self-identification and self-determination of each individual's value in the system of social relations, and collectively recognized values.

Despite the ongoing debate about the primacy of the state or law [Seidman R. B. (1978), p. 34], most researchers agree that law is one of the defining features of the state [Ober J. (2008), 556 p.]. As a formal phenomenon, it expresses the essential characteristics of the organization of public power itself and the degree of identification of the will of the population with the will of the state, in fact, as the final result of the realization of the common will and its consolidation in the relevant specific standards with higher legal force guaranteed by all the coercive power of the state. In other words, we will be able to talk about the full

achievement of the goals of implementing democratic principles when each citizen, following Louis XIV, can say: "the state is me" [Rowen H. H. (1961), p. 83].

Methodology.

The methodological basis of this article is a wide range of modern scientific research methods, which include a number of universal, general scientific, private scientific and private legal methods. Among the universal methods for our research, materialistic dialectics play a special role, thanks to which it is possible to consider the institution of democracy in dynamics and in conjunction with other phenomena.

Among the general scientific methods used in the preparation of this study, we can distinguish a systematic approach by which the institution of democracy was revealed through the study of various ties within the framework of this phenomenon.

Among the applied particular scientific methods, the statistical method should be distinguished, with the help of which the authors obtained quantitative data of such a phenomenon as democracy, as well as cybernetic, without which it would be impossible to know the institution of democracy, since it was he who made it possible to identify the signs of democracy and define the concept.

Such methods as historical-legal and comparative-legal undoubtedly serve as the basis for this article. This is due to the fact that without the historical and legal method it is impossible to consider the institution of democracy from the standpoint of its origin, development and functioning, as well as conduct research in the future.

The application of the method of comparative law allowed us to study not only different approaches to understanding democracy, but also to conduct a comparative analysis of the implementation of the signs of democracy in various countries of the world.

It was a combination of all these methods that allowed the authors to fully disclose the tasks set for them in this study.

The results of the study.

Considering law as a phenomenon of the state period of the development of mankind, we can say that the democratization of the management process of a complex organization of state type was the first successful attempt to legitimize this process by inter-socializing responsibility for decisions made and formalized in the relevant sources, as well as judicial decisions, and of course, from these positions, the first historical forms of democracy, such as ancient democracy, which reached the classical forms in ancient Athens, are of great interest. The policy system of the states of ancient Greece created the conditions for a peculiar political and legal experiment of the competitive development of various forms of organization of state power in ethnically related conditions that facilitate constructive communication [Ober J. (2008), p. 52].

The power of Athens reached its apogee in the era of Pericles; at the same time, the highest point in the development of democracy also falls. Pericles wrote: "our political system is such that it does not imitate other laws: rather, we ourselves serve as an example for others ... and our system is called democracy in view of the fact that it is not aligned with the minority, but with the interests of the majority; according to laws in private disputes,

everyone enjoys the same rights; it also does not happen that a person who is able to benefit the state was deprived of this opportunity without enjoying sufficient respect due to poverty” [Bonnard A. (1991-1992), p. 251]. Based on an analysis of historical sources, it can be concluded that Athenian democracy was the most institutionalized during Pericles in the 5th century bc. [Kagan D. 1998].

With subsequent changes due to changes in territorial characteristics, as well as changes in the quantitative composition of the subjects of socialization, basic forms of management, as a result of the transition to new and basic means of production, the fundamental institutional transformation of the state-administrative process in which the principles and institutions developed, as a result of the Athenian democratic, the practices did not meet the urgent needs and objectively required a rigorous audit taking into account new realities.

The democratic dogmatic concepts of the rule of law, equality of citizens before the law, equality of political rights, prevailing in ancient Greece, in particular in Athens, with all their obvious methodological basis and inseparability from a democratic tradition, are more symbolic and have nothing in common except of fundamental importance with their original character and practical content, but at the same time, of course, it must be borne in mind that "Athenian" democracy does not fully correspond to modern ideas about democracy, because in Athens, the principle of "equal freedom" presupposes the initial, we would say, the basic inequality of the subjects of socialization due to the economic structure and, as a consequence, the political system of slavery.

Contrary to the point of view spread and cultivated by certain scientific circles, which rejects the existence and stability of the slaves in general and in Russia in particular, traditions of a democratic nature, we can confidently say that forms of direct democracy organically grew from the very nature of the communal system and the very special essence of socialization inherent to the slaves and acquired a stable character in Russia. The princely power itself, in fact, was the result of the personalization of a collective request for certain qualities necessary for the implementation of certain competencies.

According to the annals, before the establishment of princely power, public assemblies were "an ancient habit in cities, they proved the participation of citizens in the government and could give them courage unknown in the powers of strictly unlimited autocracy", that is, the slavic people, although they obeyed the princes, but retained some liberties and converged in general affairs in the affairs and dangers of the state [7, p. 181], but in fairness it should be noted that the democratic forms themselves were not of a systemic nature, and procedural regularity was not characteristic of them. meetings were held as needed, and essentially in cases of extraordinary, when the princely authorities needed support in making unpopular decisions, or in cases where it was necessary to share or even delegate social, and sometimes political responsibility for holding any events or taking decisions. The rest of the time, decisions were made individually by the prince or together with the duma members, who were "military and civil officials, retainers, as well as city elders who, for years, reason and honor, having earned the power of attorney could be judges in people's affairs" [7, 134], but nevertheless, in the history of the Russian state, there are concrete examples of the systematic

formalization of democracy as a way of organizing and functional certainty of the government process - novgorod and pskov, where veche rule has reached its classical form. This was expressed in the fact that in the so-called "merchant" democracies and republics legislative recognition of princes had legislative functions; led administrative activities, forming direct governing bodies, electing posadniks, thousand, archbishops, appointing a governor, making decisions on the construction of cities; performed judicial functions, considering complaints, drawing up letters of satisfaction of debt claims, etc., over time, direct democracy was less and less used as a form of government. this is due to several factors of varying degrees of objectivity, namely:

1. The increase in the quantitative composition of the subjects of socialization and, as a consequence, the complexity of the process of expression of will.
2. Objectively, there is a need to formalize the process of objectification of subjective wills, interests, and narrowly social needs in government.
3. The complication of the process of public administration, due to an increase in the quantitative and volume composition of not only subjective but also object components.
4. The increase in the socio-determining significance of the category "territory" and, as a consequence, the status design of the concept of "sovereignty".
5. The increase in the territories of states. the number of cities.
6. The emergence of the phenomenon of regulatory competition of various subsystems of social regulation.
7. The formation and legal registration of classes, political elites, and then parties, as the main subjects of the formation of political ideology and political decisions, etc.

Direct democracy has been replaced by representative democracy, considering it as a result of the genesis of forms and methods of organizing power relations, giving the highest degree of legitimacy to state decrees issued, at least declared, on behalf and in the interests of almost the entire population; we must bear in mind that this is guaranteed by the fact that responsibility for decisions is made on elected representatives whose moral, ethical and competency-based characteristics correspond to the ideas of the electoral majority about a certain political and social ideal tory has developed in the mind as a result of long-term social practice, or under the influence of mythological and ideological factors of different nature.

The electorate sacrifices individual freedom for each in the name of collective prosperity, that is, we transfer the responsibility of decision-making to the citizens we have chosen, while endowing them with the appropriate powers. In this case, objectively, there is a need for a clear formal consolidation of this process, its normative definition and procedural regulation with the unconditional legitimation of the whole process, which is ensured by the immediate proximity to the source of power. At the same time, the process of law-making and direct rule-making also objectively acquires democratic characteristics, and first of all, this is expressed in the formation of a peculiar system of direct and feedback links.

A society in the form of a civil society defines the requirements for power, the power forms it in a specific legal image and form, and addresses the population and society, subject to the principle of mutual limitation of the limits of claims and implementation.

Given the absolute requirements of the regulatory hierarchy of normative impacts, and assumed by these requirements, the legal force is formed by the pyramidal structure of legal regulation at the top of which there should be a legal act of absolute legal force and the highest degree of legitimacy, which is guaranteed either by proximity to the source of power, ideally the origin directly from him, or from other socially and psychologically absolutely valuable reasons (religion, custom, etc.). This act should contain initial, basic, methodological, principled norms. In other words, a constitution or some other act of a similar nature is necessary.

Today, the vast majority of modern states have a constitution, as an act adopted for a long time in accordance with the procedures established in a particular country for a varying degree of democracy due to individual political traditions. The process of changing constitutions, as a rule, is the most difficult in the legislative technique of any country. This complexity is a guarantee against political opportunism, a guarantee of stability, consistency and continuity of processes related to rule-making and direct government. The grounds for changing constitutions are always socially and politically extreme - war, revolution, changes in the country's political course, etc.

Describing a democratic regime, it is necessary to indicate that the degree of democratization is to a large extent determined by how the transfer of power from one person to another takes place. There is some peculiarity in the UK, in which there is no single written normative legal act - the constitution, but you must not lose sight of the presence of "statutory" legislation, which in fact, fulfills to one degree or another, the functions of constitutional regulation, although the board here it is carried out mainly on traditionally established principles that are in the nature of a legal custom. European humanism introduced significant "complications" into the "simplicity" of Greek definitions. The ancient world knew only direct democracy, to which the people (slaves, of course, were not included in this category) [Vlassopoulos k. (2007), p. 39].

The concept of democracy here coincided with the concept of a democratic form of government, with the concept of direct "democracy". Although Rousseau also reproduced this Greek usage, but it was he who created the theoretical justification for a wider understanding of democracy, which has been established in our time. He admitted that various forms of state power — democratic, aristocratic, and monarchical — could be compatible with the supremacy of the people. He opened the way for a new understanding of democracy as a form of state in which the supreme power belongs to the people, and the forms of government can be different. Rousseau himself considered democracy possible only in the form of a direct "people's governance", combining legislation with enforcement. Those forms of the state in which the people reserve only the supreme legislative power and transfer execution to the monarch or to a limited circle of people, he recognized as legal from the point of view of "people's sovereignty", but did not call them democratic.

In the modern world, a system of legal ideals has developed, which political thought has formulated in the principles of the rule of law, adopted as the dominant ideologue of most states of the world. They are characterized by a much more complicated understanding of

democracy compared to the antique, although they consolidated the Greek understanding of the essence of democracy.

The rule of law, in accordance with the modern interpretation of the classical doctrine, with the emergence, and in fact, the dogmatization of liberal principles, is considered not only and not so much as a special system of organization of power, but as an extension of guarantees of the rights and freedoms of citizens, and above all, the right to freedom as a basic value. Proceeding from this, the ancient definition of democracy as a form of free life is organically connected with the very essence of democracy, as a form of the rule of law.

Many scholars call democracy free government; however, without mentioning the desire for equality inherent in democracy, we could overlook one of the most important signs of a democratic idea. De Tocqueville noted that democracy is more committed to equality than to freedom: “people want equality in freedom, and if they cannot get it, they also want it in slavery” [De Tocqueville A. 2015].

Based on the general principle of a democratic regime, it is necessary to dwell in more detail on its characteristic features:

1. A democratic regime is a way to maximize the satisfaction of collective interests and create conditions for the self-realization of individuals with their skills and abilities along the path of achieving individually significant and collectively recognized legitimate interests; moreover, a necessary requirement is the presence of a market as a competitive environment of social life with unconditional pluralism of ownership, as a condition for the formation of a small ruling elite in whose hands the main levers of government control are concentrated. This, as a result, necessarily generates political pluralism as the basis of a democratic regime [Klyukovskaya I.N., Demchenko T.I., Gabrilyan R.R., Kardanova A.K., Popova L.A. (2017)]. Signs of political pluralism include the following:

- A democratic society is not conceivable without a variety of mutually influencing, competitive political forces operating within the framework of laws.
- Diversity of party composition without the presence of any state-provided competitive advantages of one of the subjects of the political process.
- Legally enshrined equality of all political parties.
- Mandatory regularity of election events, with mandatory formalization of the procedure for legitimizing power on the basis of a verdict of the voters, to which they have a legislatively fixed right.
- The indispensable existence of guarantees of rights to openly and publicly express their views, opinions and beliefs that are contrary to the existing authorities through any legal means.

2. The above-mentioned demand for political pluralism is not the only, and, even more so, basic along with it, and in the view of some authors liberalism, which absolutizes the process of expanding the rights and freedoms of citizens, is of paramount importance. moreover, in some cases, this process acquires a grotesque ugly character.

The principle “not a citizen exists for the state, but a state for a person” is the basic postulate of liberalism, which directly implies expansion and full provision, taking into

account promising trends, democratic rights and freedoms of the individual, while minimizing state and public interference in the activities of private individuals absolute subjective sovereignty.

3. The rights and freedoms of man and citizen are absolutely dominant in the system of social, political and formal legal values, they are higher:

- National, which is especially important in multinational states, especially such uniquely multi- subject states as Russia.

- Class - meaning the class as a socially homogeneous layer of the population, isolated on the basis of attitudes toward ownership of the means of production and attitudes toward the distribution of the results of economic activity, and as a result of the unity of social, economic and political interests determined by them.

- Religious, as historically developed and economically indifferent.

- Focused on maintaining the mechanism of a market economy, a multi-party system, the limited regulatory role of the state, moderate social reformism, ensuring international security and the development of integration processes.

4. The main structure-forming principle of the functioning of the state and the implementation of public administration in any state claiming to be legal is the principle of separation of powers, which also ensures the functioning of the political system under a democratic regime of public administration. The classical doctrine presupposes the existence of three branches of government - legislative, executive and judicial, although there is an opinion, that today, there are already modifications of the doctrine in which, with a formal legal analysis, four or even five branches of government can be distinguished.

The necessity of this principle is caused by the need to exclude the very possibility of usurping the fullness of state power by any body, and even more so by an individual. In other words, it acts as a certain basis for guaranteeing democratic principles and fundamental methodological principles of a dogmatic nature.

State bodies, according to the method of formation, under a democratic system of public administration, are divided into primary and derivatives, depending on their proximity to the source of power, i.e., on the elected and appointed, this is also a determining sign of the legal force of decisions. The closer to the source of power, the higher the legal force - this is the essential characteristic of democracy in the process of public administration.

The existence and functioning of the constitutional dialogue of various political forces, sometimes of a polemical nature, but within the framework of constitutional legality, helps to achieve a certain consensual compromise, in which a state of social and political stability is possible, the mechanism for which is a complex combination of separation of powers, a system of checks and balances as a form implementation of the separation of powers, federal, party, public and information structures those with a fixed and normatively guaranteed publicity.

5. The democratic regime is characterized by a very broad constitutional and other legislative consolidation and implementation in practice of a rather extensive list of economic, social, political, spiritual, personal rights and freedoms of citizens. An important

role in this is played by constitutional legality, represented by the institute of constitutional supervision, which in modern conditions cannot ignore public opinion and the interests of the general public.

6. The liberal idea does not exclude the existence of coercive bodies in any, even the most liberal society, but at the same time they are institutionally regarded as a guarantee of the protection of liberal values, which can be politically and socially conflicting, but the very process of institutionalization of this structure presupposes, first of all, the regulation in the legal legislation of the ways, forms and limits of possibilities for the functional realization of their mission by bodies whose law enforcement activity can be realized in the form of legitimate coercion.

7. In addition, for the successful functioning of a democratic political system and regime, a necessary requirement is an unprecedentedly high level of development of a political culture, both internal and external, necessarily formalized in specific legal requirements and corresponding to the level of legal culture. The fulfillment of this requirement cannot be uniform and is characterized by a variety of levels and types on which the nature of power and its forms depend in many respects; in addition, they methodologically determine the attitude of the authorities towards ordinary citizens in specific cases of legitimate coercion provided by legal legislation.

8. A necessary requirement is the functional interaction of two historically established forms of implementing democracy - direct and representative. the direct still has the definition of direct in science - the first historical form of democracy.

CONCLUSIONS.

Summing up our reasoning, we note that, given the variety of approaches to understanding democracy, first of all, there is a textural change in the functional characteristics of institutions designed to ensure the very process of democratization of public administration.

The signs that determine democratic forms in modern conditions acquire characteristics of methodological conflict caused by national-mental, historical-mental, economic [Klyukovskaya I.N., Cherkashin E.Y., Gabrilyan R.R., Semenov V.Y., Melekayev R.K. (2018)], and as a result, ideological factors.

The authors would like to note that predefined signs objectively require rehabilitation, to some extent, discrediting the ideas of liberalism, by methodologically eliminating elements that have degraded during implementation in previous models.

We believe that democracy is not a given of a dogmatic, constant nature. It presupposes the ultimate freedom of choice of methods and forms of implementation with unconditional observance and respect for the basic principles developed by millennia of social and state progress.

The issues that are explored in this article, naturally require a detailed study. We believe that it is difficult to answer them within the framework of one scientific article, which only confirms the need to continue research on such a multifaceted phenomenon as democracy.

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